

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

Crl.Rev.Pet.No. 1228 of 2003()

**CRA.15/1999 of ADDL.DISTRICT AND SESSIONS COURT, MANJERI
CC.228/1994 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II,
PERINTHALMANNA**
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REVN. PETITIONER: APPELLANT/ACCUSED:

**MATHARI KAPPUNGAL MOIDEEN,
S/O. ABDULLA, PANTHALLOOR AMSOM, KADAMPOD,
MALAPPURAM.**

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS: RESPONDENT/COMPLAINANT & STATE:

**1. THE SUB INSPECTOR OF POLICE,
PANDIKKAD.**

**2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 12/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

CRL.RP. NO.1228/2003

ORDER ON CRL.MP. NO.4906/2003 IN CRL.RP. NO.1228/2003

DISMISSED

12.11.2007

SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

CRL.R.P.NO.1228 OF 2003

DATED THIS THE 12th November 2007

ORDER

The revision petitioner is the accused in C.C.No. 228/1994 with respect to the offences under Sections 341 and 323 of the Indian Penal Code and stands convicted for the offence under Section 323 I.P.C.and sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.1000/- and in default to undergo simple imprisonment for one month. The prosecution case is that on 18-5-1994 at about 2.30 p.m.the accused caught hold of the hands of PW1 and pushed her down and kicked on her stomach and when PW2 the sister of PW1 attempted to intervene the accused beat on her face with hands.

2. The prosecution evidence consisted of the testimony of Pws.1 to 9 and Exts.P1 to P5. Pws.1, 2 and 4 have testified in support of the prosecution version. Pw3 an alleged occurrence witness was treated as hostile as his version before the police was totally denied. PW9, the Doctor who issued Ext.P5 wound certificate has testified in proof of the same. It is the contention of the counsel for the revision petitioner that there is a delay of about 15 days in registering the crime. The incident has taken place as already noted on 18-5-1994 at

about 2.30 p.m. The F.I.R. was registered on 5-6-1994. PW8, the investigating officer has explained the delay. According to him the crime was not registered immediately although the statement of PW1, the injured was recorded on the next day itself at the hospital as only non-cognizable offence, i.e. Section 323 I.P.C. was found involved at the time the crime was not registered.

3. PW1 has deposed that although her statement was recorded from the hospital and as no case was registered she filed complaint before the Sub Inspector of police, Circle Inspector of Police and the District Collector. It is the version of Pw1 that on the day of the incident she did not go to the hospital and in the night she developed pain in the stomach and hence went to the hospital and according to her, she was hospitalised for about 18 days. Ext.P5 wound certificate proved by PW9 shows that she was admitted at the hospital on 19-5-1994, i.e.next day of the incident. The alleged cause is also mentioned as the accused pulled her down and kicked on her stomach. No contradiction with respect to the previous statements of Pws.1,2 and 4 has been brought out. PW4 is a witness who reached the spot during the course of the incident. According to him, he saw PW1 crying and accused abusing her. In the circumstances, I find no

reason to interfere in the concurrent findings of the courts below that delay has been properly explained and the fact that PW1 was attacked by the accused and that she was admitted in the hospital stands proved by Pws.1, 2 and 4. The conviction is confirmed.

4. So far as the sentence is concerned, counsel has pleaded for leniency pointing out that about 13 years have elapsed since the date of the incident and that the accused/revision petitioner was facing the criminal proceedings so long. In the circumstances the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.7500/- to PW1 and in default to undergo simple imprisonment for three months. The revision petitioner is granted two months time from today onwards to pay the amount of compensation. He shall appear before the Judicial Magistrate of First Class-II, Perinthalmanna on 14-1-2008 to receive sentence. The criminal revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.R.P. NO. 1228 of 2003

ORDER

12-11-2007